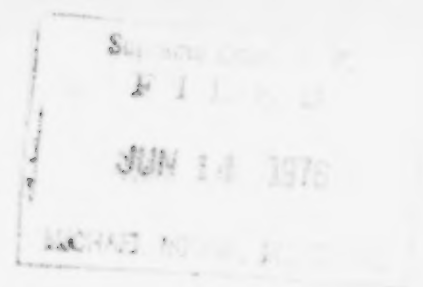


No. 75-1450



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

IOWA DEPARTMENT OF SOCIAL SERVICES,
STATE OF IOWA,

Petitioner,

vs.

WEST HEIGHT MANOR, INC.,

Respondent,

KEVIN BURNS, COMMISSIONER OF STATE OF IOWA
DEPARTMENT OF SOCIAL SERVICES, AND STATE
OF IOWA DEPARTMENT OF SOCIAL SERVICES,

Petitioners,

vs.

HUTCHISON NURSING HOME, INC., NEW HAVEN REST
HOME, INC., GRIFFIN NURSING CENTER,

Respondents.

REPLY TO
BRIEF OF RESPONDENTS, HUTCHISON NURSING HOME,
INC., NEW HAVEN REST HOME, INC., AND GRIFFIN
NURSING CENTER IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI TO THE IOWA SUPREME COURT

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ATTORNEYS FOR PETITIONERS

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REPLY TO BRIEF OF HUTCHISON NURSING HOME ET AL.

It is stated in Respondent's printed Brief (page 1) that the issues in *Hutchison* are not identical with those in *West Heights, Inc.* Disagreeing with this Statement, and agreeing with the Petitioner that the issues "in the above-captioned case are identical to those in the *Department of Social Services of Iowa, et al., v. Hutchison Nursing Home, et al.*" (letter dated June 4, 1976 to Mr. Michael Rodak, Jr., Clerk of the Supreme Court of the United States, from Mr. James P. Monen, attorney for West Heights), Counsel for West Heights declines to file a Brief stating, "In short, what we would hope is that we could ride the coattails of the *Hutchison Nursing Home* case."

Respondents in these consolidated cases have now responded by letter and by a Brief.

But the response is not an adequate response. In fact it is actually no response at all to the issues properly before this Court.

Respondents present no statutory authority nor judicial decisions to controvert the contentions of Petitioner's "Statement of the Case", "Reasons for Granting Writ", and the arguments presented in "The Federal Questions are Substantial".

It is difficult to understand the bald statement of the reputable counsel for Respondents that "there were no federal questions raised by Petitioners in the Courts below", (Respondent's Brief p. 2), when the evidence shows otherwise.

The Appendix filed in the Iowa Supreme Court contained pertinent excerpts from testimony taken at both the consolidated Administrative Hearings and before the District Court of the State of Iowa for Polk County, together with pleadings.

Exhibits produced at the *Hutchison et al.*, Administrative Hearing, included Iowa's State Plan and pages 3 and 7 "Basis of Payment" from the Iowa Department of Social Services

Handbook for Skilled Nursing Homes. The "Basis of Payment" was attached to the Petition filed in the District Court as an Exhibit in *West Heights*, and later admitted in evidence therein. [See Appendix H, Petition to Writ p. 28a].

Mr. Brock testified at the Administrative Hearing that "New Haven has them (Handbooks)" and Mr. Heckinger, Accountant for all three nursing homes testified that "the handbooks were going out at that time (entry into the Medical Assistance Program) and I assume all of them got them." [Appendix, Iowa Supreme Court p. 9 of Administrative proceedings].

And, at the Administrative Hearing when Exhibits "E" and "G" were offered in evidence, (both containing the "Basis of Payment" on pages 3 and 7 of two editions of the Handbook), the attorney for *Hutchison Nursing Home et al.* stipulated that:

"they [the handbooks] did originally and always had stated that the cost reimbursement principle used under Title XVIII would be used under the Title XIX Program." [Appendix, Supreme Court, *Hutchison et al.*, p. 10].

Also, at the consolidated Administrative Hearing of the three nursing homes, Mr. Newell, Accountant for Blue Cross, testified as follows:

Mrs. Williams: Q "Isn't that what we're all getting at--what is the reasonable cost that should be paid to skilled nursing homes for their services under the *Social Security Act*, the reasonable cost?"

Mr. Newell: A "That is correct, the reasonable cost." [Appendix, Iowa Supreme Court p. 24].

From the transcript of the hearing before the District Court in and for Polk County, Iowa, we read:

Recross Examination of Lawrence E.
Cook of Hutchison Nursing Home.

Mrs. Williams: Q "Isn't it true that you were limited to the reasonable cost of the operation of your facilities by the *Social Security Act*?"

Mr. Cook: A "Yes." [Appendix, Iowa Supreme Court p. 43].

Cross Examination of R. Buckman Brock of
New Haven Nursing Home

Mrs. Williams: Q "But you at no time thought you would be able to recover more than the reasonable cost of the operation of your facility from the State of Iowa, did you?"

Mr. Brock: A "We were told we would receive a reasonable cost reimbursement."

Mrs. Williams: Q "And you also knew that you could only receive reasonable costs from the *Title XVIII Program* too, didn't you?"

Mr. Brock: A "Yes."

Mrs. Williams: Q "And, so doesn't that mean that the year you take accelerated depreciation, the State allows you more costs for your [operation] costs?"

Mr. Brock: A "Yes, I would assume so." [Appendix Supreme Court p. 43-44].

Cross Examination of Earl Griffin of
Griffin Nursing Home.

Mrs. Williams: Q "And isn't it true that during the first year or two that you came in the Title XIX Program and your Accountant figured depreciation on an accelerated method that you got more money from the State of Iowa than you would have gotten had he used a straight line method?"

Mr. Griffin: A "Yes." [Appendix, Iowa Supreme Court p. 45].

Also at the Polk County District Court Hearing, Mr. Donald W. Herman, Accountant for the Petitioner testified:

A "Mutual of Omaha (carrier for these three nursing homes in the Title 18 Program) revised its (Title 18) settlement. We revised the (Title 19) settlement."

A "I notice that you called it a new rule (August 1, 1970 regulation). I don't think it was a new rule or regulation. I think there was a clarification of reasonable costs which were printed in 1956. [1966]" [Appendix, Iowa Supreme Court p. 46].

All three nursing homes in *Hutchison* testified that they had received a statement from the carrier in the Title XVIII Program which included a "retroactive" adjustment because of their termination from the Program (and which settlement letter recaptured accelerated depreciation similar to the one sent by Iowa in Title XIX). They conceded that they paid the Federal Government in the Title XVIII Program. [Appendix,

Supreme Court pp. 12 and 45, and Administrative Hearing Transcript, pp. 59 and 70.]

In explanation, the attorney for the three nursing homes felt compelled to make this statement:

"... This client did not choose to follow [battle] the Federal Government but chose to battle the State of Iowa". [Transcript Administrative Hearing p. 59].

Thus, as can be seen from the transcript, the substantial Federal question was ever present from the initiation of the litigation in *West Height* and the commencement of the administrative process in *Hutchison*.

In their Brief, Respondents merely urge this Court to award them damages, but those damages are based upon a wrong decision of a State Court. They would have this Honorable Court overturn its many previous decisions (cited in the Petition) and they would have a State Court's decision, which undermines the jointly sponsored Federal-State Program under the Federal Social Security Act, stand, in the interest of receiving Federal-State money to which they are not entitled under the Federal Social Security Act.

The filing of this Petition was neither for delay nor is it frivolous as charged by Respondents. It is filed for the purpose of having an incorrect decision of a State Court corrected, and having other pending litigation in Iowa and the Federal Courts resolved.

If a State Court is permitted to override Federal Law with local law and destroy the intent of Congress in this instance, it can do so in any other Federal-State jointly administered Federal Program. The problem is not limited to the medical assistance program of the Social Security Act.

CONCLUSION

Respectfully, Petitioner prays that this Court grant its Petition for Writ of Certiorari to correct the incorrect decision of the Iowa Court, and be decisive of other controversies and litigation pending in Iowa and in four different circuits of the United States Court of Appeals.* Since the filing of this Petition, the same issue has been raised in an appeal to the First Circuit Court of Appeals in *Adams Nursing Home of Williamston, Inc., v. F. David Mathews (Secy. HEW) et al.*, No. CA-1-No. 76-1212.

Respectfully submitted,

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Attorney General of Iowa

LORNA LAWHEAD WILLIAMS
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* Three cases appear in footnote page 14 of Petition for Writ of Certiorari. In footnote 3, p. 13 of Petition, controversies and other litigation in Iowa are noted.